

**FLATHEAD COUNTY PLANNING AND ZONING OFFICE
ZONING MAP AMENDMENT REPORT (#FZC-20-14)
DONOVAN BERGESON
NOVEMBER 24, 2020**

I. GENERAL INFORMATION

A. Project Description

This is a report to the Flathead County Planning Board and Board of Commissioners regarding a request by Sands Surveying, Inc, on behalf of Donovan Bergeson, for the properties located within the Highway 93 North Zoning District. The proposed amendment, if approved, would change the zoning of the subject property from *SAG-10 (Suburban Agricultural)* to *I-1H (Light Industrial Highway)*.

B. Application Personnel

1. Owner/Applicant

Donovan Bergeson
255 Scenic Ridge Road
Kalispell, MT 59901

2. Technical Representative

Sands Surveying, Inc
2 Village Loop
Kalispell, MT 59901

C. Process Overview

Documents pertaining to the zoning map amendment are available for public inspection in the Flathead County Planning and Zoning Office located in the South Campus Building at 40 11th Street West in Kalispell.

1. Land Use Advisory Committee/Council

This property is not located within the jurisdiction of a Land Use Advisory Committee.

2. Planning Board

The Flathead County Planning Board will conduct a public hearing on the proposed zoning map amendment on December 9, 2020, at 6:00 P.M. at the Flathead County Fairgrounds.

3. Commission

The Flathead County Board of Commissioners will review this proposal after the public hearing conducted by the Planning Board and prior to December 22, 2020. This space will contain an update regarding the Flathead County Commission review of the proposal.

II. PROPERTY CHARACTERISTICS

A. Subject Property Location and Legal Description

The properties are located at 4095 Highway 93 North and 100 Scenic Ridge Road near Kalispell, MT (see Figure 1 below) and is approximately 14.074 acres. The properties can be legally described as Lot 5D and 5F in Section 01, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana and more specifically described as follows:

Tract 1

A Tract of land, situated, lying and being in the East Half of the Northeast Quarter of Section 1, Township 29 North, Range 22 West, P.M.M., Flathead County, Montana, and more particularly described as follows to wit:

Commencing at the Northeast corner of the NE ¼ of Section 1, Township 29 North, Range 22 West, P.M., M., Flathead County, Montana, being a found iron pin; Thence along the north boundary of said NE ¼, N89°56'44"W 663.97 feet to THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED: Thence S00°08'04"E 672.57 feet to a found pin on the Northeast R/W of a 60 foot deeded County Road known as Scenic Ridge Road; Thence northwesterly along said R/W the following three courses: N19°01'47"W 371.05 feet to a set iron pin; N49°05'47"W 407.90 feet to a set iron pin, and N89°30'47"W 49.23 feet to a set iron pin on the east R/W of U.S. Highway 93; Thence along said R/W N00°08'29"E 54.74 feet to a point on the north boundary of said NE ¼; Thence along said north boundary S89°56'44"E 476.79 feet to the point of beginning, containing 2.765 Acres.

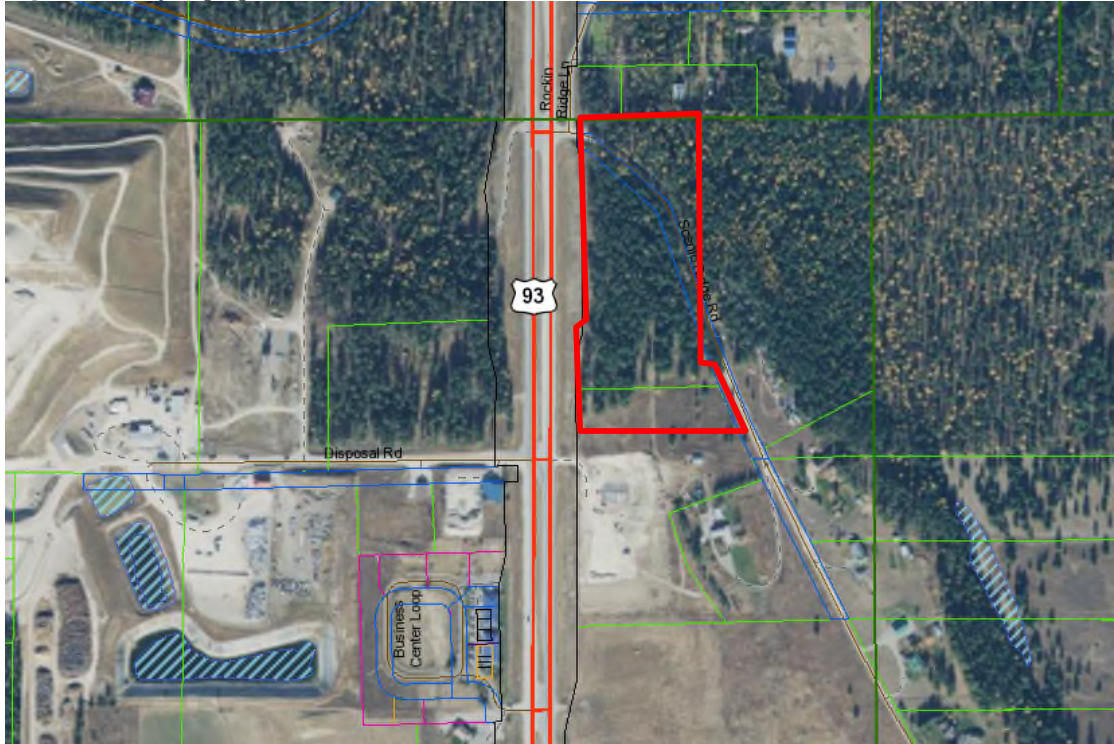
ALSO, Commencing at the Northeast corner of the NE ¼ of Section 1, Township 29 North, Range 22 West, P.M., M., Flathead County, Montana, being a found iron pin; Thence S29°47'14"W 1189.66 feet to a set iron pin on the Southwest R/W of a 60 foot deeded County Road known as Scenic Ridge Road and THE TRUE POINT OF BEGINNING OF THE TRACT OF LAND HEREIN DESCRIBED: Thence leaving said R/W West 558.38 feet to a set iron on the east R/W of U.S. Highway 93; Thence along said R/W the following four courses: N00°06'51"E 122.55 feet to a found aluminum cap; N16°44'38"E 91.27 feet to a found aluminum cap; N00°07'58"E 634.33 feet to a found aluminum cap, and N14°00'44"W 76.83 feet to a set iron pin on the Southwest R/W of said Scenic Ridge Road; Thence along said R/W the following four course: S89°30'47"E 25.72 feet to a set iron pin; S49°05'47"E 369.70 feet to a set iron pin; S19°01'47"E 517.28 feet to a set iron pin, and S21°50'47"E 202.02 feet to the point of beginning, containing 7.235 Acres, for a GRAND TOTAL OF 10.000 ACRES; subject to and together with all appurtenant easements shown and of record.

AND

Parcel A

Parcel A of Certificate of Survey No. 21076, in the East Half of the Northeast Quarter of Section 1, Township 29 North, Range 22 West, P.M.M. Flathead County, Montana, according to the map or plat thereof on file and of record in the office of the Clerk and Recorder of Flathead County, Montana.

Figure 1: Subject properties (outlined in red)

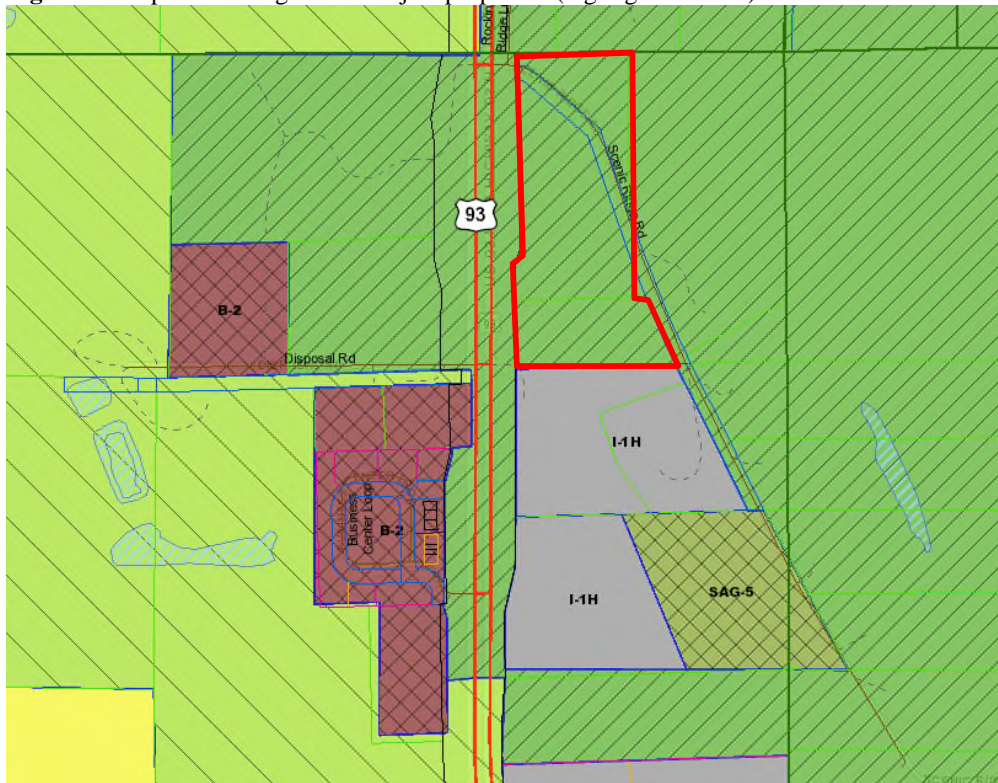


B. General Character of and Reason for Amendment

The property is located between U.S Highway 93 just south of Scenic Ridge Road. The property is on a slope with low point being along the highway and high point along east side of the property. There are no structures currently on the areas of the properties that are subject to rezoning.

The application states the reason for the request as, “The property is located along Highway 93 North in the vicinity of the Flathead Valley Landfill. The property on the west side of the Highway is zoned for commercial and industrial uses. In recent years properties to the south have been rezoned to I-1H one of which was the applicant’s property. The highway frontage in the vicinity of the landfill is better suited to light industrial use than residential use. The topography of the subject properties also creates a distinction between what would be light industrial use and the Suburban Agricultural use.”

Figure 2: Proposed zoning on the subject properties (highlighted in red)



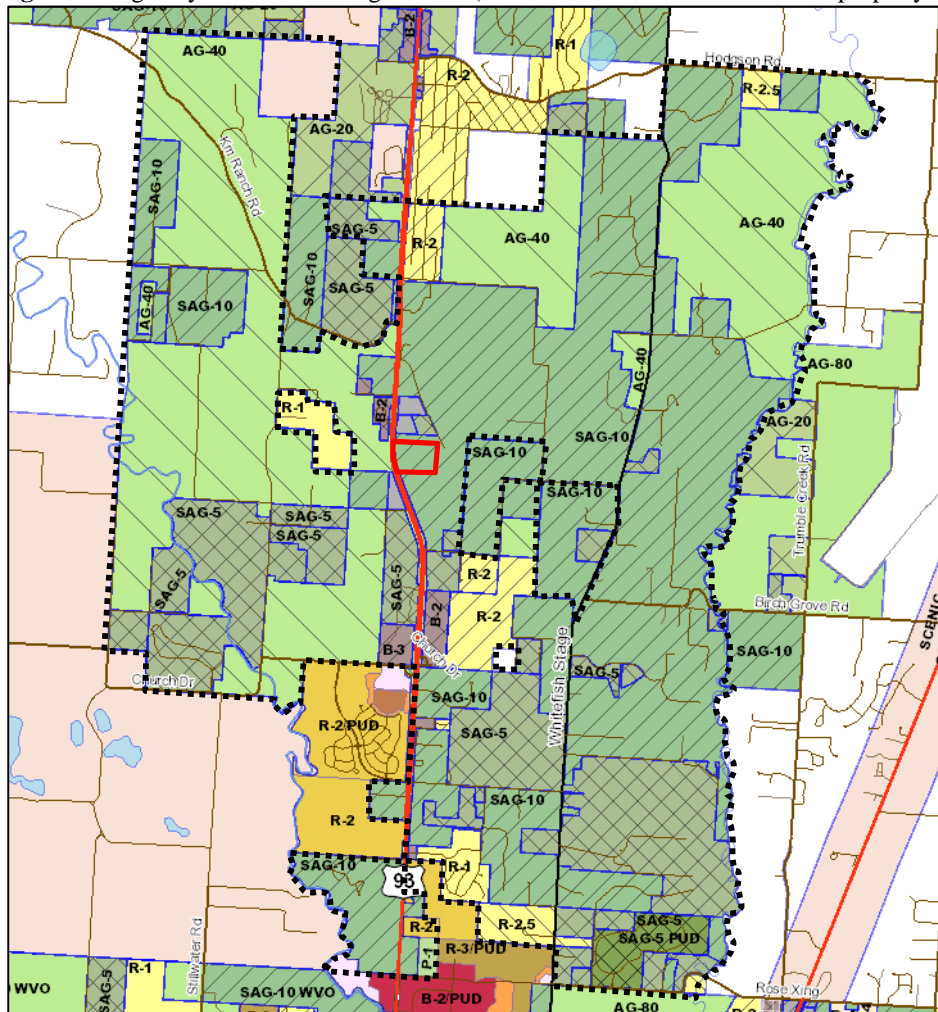
C. Adjacent Zoning and Character of the Overall Zoning District

The property is located within the Highway 93 North Zoning District, which is a 12,780-acre zoning district that covers much of the area between Whitefish and Kalispell. Looking at the zoning within a half mile of the subject property and further north and south along Highway 93 the character of the Highway 93 corridor is a mixture of suburban agricultural, agricultural, highway industrial, commercial and residential zoning. The property is located along U.S. Highway 93 and to the east of the Flathead County Landfill and several businesses. The landfill and those businesses are zoned AG-40, SAG-10 and B-2.

With the exception of two properties to the south of the subject property, with I-1H zoning, the properties to the north, south and east are zoned SAG-10. Further to the south along Highway 93 is AG-40 and I-1H zoning, followed by SAG-5, B-2 and B-3 zoning less than 2 miles to the south. The B-2 and B-3 zoning are located across the highway from the subject property. To the north along the highway are SAG-5, AG-40, R-2 and some B-2 districts. There is B-2 zoning located on both sides of the highway approximately 2.5 miles to the north.

The City of Kalispell extends to Church Drive, approximately 2 miles south of the property (Silverbrook Subdivision). The zoning within the Silverbrook Subdivision is a mixture of B-1/PUD at the corner of Church and Highway 93 and R-4/PUD and R-2 /PUD.

Figure 3: Highway 93 North Zoning District (outlined with dashed black line & property outlined in red)



D. Public Services and Facilities

Sewer:	N/A
Water:	N/A
Electricity:	Flathead Electric Cooperative
Natural Gas:	Northwestern Energy
Telephone:	CenturyTel
Schools:	Whitefish School District Whitefish High School District
Fire:	West Valley Fire District
Police:	Flathead County Sheriff

III. COMMENTS

A. Agency Comments

1. Agency referrals were sent to the following agencies on October 1, 2020:
 - Flathead County Sheriff

- Montana Department of Transportation
- Flathead County Road Department
- Flathead County Solid Waste
- Flathead City-County Health Department
- Flathead County Weeds & Parks Department
- Bonneville Power Administration
- City of Whitefish Planning Department
- City of Kalispell Planning Department
- Montana Fish, Wildlife and Parks
- West Valley Fire District

2. The following is a summarized list of agency comment received as of the date of the completion of this staff report:

- Flathead County Road & Bridge Department
 - Comment: “At this point the County Road Department does not have any comments on this request.” Letter dated October 5, 2020
- City of Kalispell Planning Department
 - Comment: “[...]. We would recommend the proposed zone change of I-1H (Light Industrial Highway) be denied based on the following issues and concerns.

“1. The Highway 93 North Zoning District, was specifically enacted by the property owners in the middle 1990’s to avoid the spread of commercial and industrial development along US 93. This effort is at the heart of protecting our scenic corridors along highways, a view championed by the greater community. Rezoning the subject property I-1H would take all future development control away from the county, which could lead to more strip commercial and industrial development. This can be evidenced by the approval of the previous industrial zone change requests in the area, which we had also recommended denial.

“2. Preventing the continuation of one long commercial/industrial strip from Kalispell to Whitefish along Highway 93 North is a community-wide priority. There is ample commercial development potential currently along Highway 93 within the county and city.

“3. MDT has already indicated in the last several Transportation Impact Studies for users along this stretch of Highway 93 that full access approaches for commercial users are not available. Anything less than a full access approach onto Highway 93 would hinder future business access and success (i.e. right-in right-out only access) and if approved will hinder the free flowing capacities of Highway 93, a 4 lane road that the greater Flathead has worked hard to develop, and must work harder to maintain in a free flowing configuration. There does not appear to be a coordinated effort to mitigate traffic impacts to the adjacent highway and there is no perceived community benefit.

“Adding to the commercial and industrial zoning inventory at this time and at this location is not appropriate based on the points above. We would encourage the Flathead County Planning Board and Board of County Commissioners to

consider the above comments and possible negative effects approving an I-1H Zoning District would have along this portion of Highway 93 North.” Letter dated October 5, 2020

- Montana Department of Transportation
 - Comment: “[...] As stated in the submittal if in the future there is a change to the use of the existing approach to Hwy 93 than the owner should contact MDT for a new approach permit. We do not have any other comments regarding this proposal.” Email received October 15, 2020
- Bonneville Power Administration
 - Comment: “At this time, BPA does not object to this request, as the property edge is located 4.91 miles away from the BPA transmission lines or structures.” Email received October 5, 2020
- Environmental Health Department
 - Comment: “Have no comment for a zone change.” Email received October 15, 2020

B. Public Comments

1. Adjacent property notification regarding the proposed zoning map amendment was mailed to property owners within 150 feet of the subject property on November 20, 2020. Legal notice of the Planning Board public hearing on this application was published in the November 22, 2020 edition of the Daily Interlake.

Public notice of the Board of County Commissioners public hearing regarding the zoning map amendment will be physically posted on the subject property and within the zoning district according to statutory requirements found in Section 76-2-205 [M.C.A]. Notice will also be published once a week for two weeks prior to the public hearing in the legal section of the Daily Interlake. All methods of public notice will include information on the general character of the proposed zoning map amendment, and the date, time, and location of the public hearing before the Flathead County Commissioners on the requested zoning map amendment.

2. Public Comments Received

As of the date of the completion of this staff report, no public comments have been received regarding the requested zoning map amendment. It is anticipated any member of the public wishing to provide comment on the proposed zoning map amendment may do so at the Planning Board public hearing scheduled for December 9, 2020 and/or the Commissioner’s Public Hearing. Any written comments received following the completion of this report will be provided to members of the Planning Board and Board of Commissioners and summarized during the public hearing(s).

IV. EVALUATION OF PROPOSED AMENDMENT

Map amendments to zoning districts are processed in accordance with Section 2.08 of the Flathead County Zoning Regulations. The criteria for reviewing zoning amendments are found in Section 2.08.040 of the Flathead County Zoning Regulations and 76-2-203 M.C.A.

A. Build-Out Analysis

Once a specific zoning designation is applied in a certain area there are certain land uses that are permitted or conditionally permitted. A build-out analysis is performed to examine

the maximum potential impacts of full build-out of those uses. The build-out analysis is typically done looking at maximum densities, permitted uses, and demands on public services and facilities. Build-out analyses are objective and are not best or worst case scenarios. Without a build-out analysis to establish a foundation of understanding, there is no way to estimate the meaning of the proposed change to neighbors, the environment, future demands for public services and facilities and any of the evaluation criteria, such as impact to transportation systems. Build-out analyses are simply establishing the meaning of the zoning map amendment to the future of the community to allow for the best possible review.

Per Section 3.28 of the Flathead County Zoning Regulations (FCZR), I-1H is defined ‘*A district to provide areas for light industrial uses and service uses that typically do not create objectionable by-products (such as dirt, noise, glare, heat, odors, smoke, etc.), which extend beyond the lot lines. It is also intended that the encroachment of nonindustrial or non-specified commercial uses within the district be prevented other than those listed herein. This district is intended for industrial areas which are located along state and federal highways and contain greater levels of performance and mitigation utilizing increased setbacks, landscape buffering, access control and signage restriction for the purpose of protecting the County’s major travel ways from unnecessary encroachments, limiting access points to encourage improved traffic flows and to preserve scenic corridors and entrance ways to major communities.*’

The SAG-10 designation is defined in Section 3.07 FCZR as, ‘*A district to provide and preserve agricultural functions and to provide a buffer between urban and unlimited agricultural uses, encouraging separation of such uses in areas where potential conflict of uses will be minimized, and to provide areas of estate-type residential development.*’

The permitted uses and conditional uses for the proposed and existing zoning contain several differences. The amendment would increase the number of permitted uses from 21 to 50 while decreasing the conditional uses from 23 to 15.

The permitted uses listed in both the SAG-10 and I-1H are as follows:

- Cellular Tower.
- Daycare.
- Nursery, landscaping material.
- Park and publicly owned recreational facility.
- Public transportation shelter station.
- Public utility service installation.

The conditional uses listed in both the SAG-10 and I-1H are as follows:

- Electrical distribution station.
- Golf driving range.
- Temporary building or structure.
- Water storage facility.

The conditional uses listed within the SAG-10 but allowed as permitted uses in I-1H are as follows:

- Church and other place of worship.
- Contractor’s storage yard.

The bulk and dimensional requirements within the current zoning requires a 20 foot setback from front, rear, side-corner and side boundary line for principal structures and a setback of 20 feet for the front and side-corner and 5 feet from the rear and side for accessory structures. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials for both the proposed and current zoning. For SAG-10 the permitted lot coverage is 20% and maximum height is 35 feet

The proposed zoning requires a setback of 20 feet from front, rear, and side-corner boundary lines and 10 feet from side boundary lines and the setbacks shall be increased when a property abuts the following features:

- Highway – direct access lot 100 feet
- Highway – no access: 35 feet
- County Road - direct access: 50 feet
- Stream – high water mark: 50 feet

The maximum building height in I-1H is 40 feet and there is no permitted lot coverage.

The existing zoning requires a minimum lot area of 10 acres. The proposed zoning requires a minimum lot area of one acre therefore approximately 14 additional lots could be created. The requested zone change has the potential to increase density through subsequent subdivision in the future. The bulk and dimensional requirements are different and the number of permitted uses would increase while the number of conditional uses would decrease.

B. Evaluation of Proposed Amendment Based on Statutory Criteria (76-2-203 M.C.A. and Section 2.08.040 Flathead County Zoning Regulations)

1. Whether the proposed map amendment is made in accordance with the Growth Policy/Neighborhood Plan.

The Flathead County Growth Policy Designated Land Uses Map identifies the subject properties as ‘Suburban Agricultural.’ The proposed I-1H zoning classification would appear to contrast with the current designations. However, Chapter 10 Part 3: Land Uses Maps of the Growth Policy under the heading Designated Land Use Maps specifically states, “This map depicts areas of Flathead County that are legally designated for particular land uses. This is a map which depicts existing conditions. The areas include zoning districts which are lumped together by general use rather than each specific zone and neighborhood plans. Further information on particular land uses in these areas can be obtained by consulting the appropriate zoning regulations or neighborhood plan document. The uses depicted are consistent with the existing regulations and individual plan documents. This map may be changed from time to time to reflect additional zoning districts, changes in zoning districts, map changes and neighborhood plans as they are adopted. Since this map is for informational purposes, the Planning Staff may update the same to conform to changes without the necessity of a separate resolution changing this map.” Staff interprets this to mean the Designated Land Use Map is not a future land use map that implements policies, but rather a reflection of historic land use categories. If the zoning map amendment is approved the

Designated Land Use Map can be updated by staff to reflect changes made by the County Commissioners based on goals and policies of the Growth Policy.

The Growth Policy states, *“Industrial parks and centers provide a regional service by serving a growing economy with needed industrial space and co-locating potentially hazardous land uses in areas that have been designated as being minimally impacted by odors, heavy truck traffic, noise, etc. [...].It is important to locate industrial uses close enough to services to increase efficiency but far enough from established residential uses to avoid objectionable impacts.”*

The properties are located across the highway from the Flathead County Landfill and along Highway 93, an area that has the potential to be minimally impacted by heavy traffic that could be associated with light industrial uses, as the landfill generates odors and heavy truck traffic and is more compatible with an industrial use than a residential use. The properties to the south recently underwent a zone change from SAG-10 to I-1H.

Chapter 2, Part 5 of the Growth Policy states: *“Flathead County currently has approximately 333,136 acres that are zoned. Many of the lands are located around or between the business centers of Flathead County generally known as Bigfork, Kalispell, Evergreen, Whitefish, and Columbia Falls. Of the 333,136 acres of land with regulated land uses, only 1,467 acres are zoned for uses commonly defined as industrial. A limited quantity of land makes land prices higher and creates difficulties for businesses seeking efficient locations. This situation leads industrial business owners to acquire property further from services than they might otherwise desire, typically in unzoned areas of the County. Industry located far from services creates problems for water, sewer, transportation, safety and human services.”*

Chapter 2, Part 6 of the Growth Policy states: *“Combining the need for commercial land uses with the vision of residents is both a function of where they are located, and the impact on the local community. All but one of the seven elements of the public’s vision for the future of the county outlined in Chapter 1 are directly impacted by the manner in which commercial land is developed. County residents regularly comment on the need to prevent “strip development” from dominating the rural landscape between business centers. Strip development is a pattern of commercial development located along one or both sides of a street which is generally one lot in depth and is characterized by multiple and relatively closely spaced driveways, visually dominant parking schemes, low landscaping ratios and high floor area ratios within the development. It is not a common remark that no development should take place, just that a certain type of development should be avoided. Again, the impact of the development is just as important as the location of the development.”*

Chapter 7, Part 1 of the Growth Policy states: *Given the growing increased in annual waste production, the landfill is a critical amenity for the public health of the County. As the community grows adjacent to the landfill operations, it is critical to maintain an understanding and application of compatible land use decision making. Land uses which are compatible to the district operations (e.g. low intensity industrial and commercial, etc.) should be encouraged and uses not compatible discouraged (e.g. medium to high density residential.”*

The properties are located approximately between the cities of Whitefish and Kalispell, along Highway 93 in a centralized area of the county. The proposed zone change encourages low intensity industrial/commercial uses and discourages medium to high density residential uses.

- ❖ **G.2** – *Preserve the rights of property owners to the use, enjoyment and value of their property and protect the same rights for all property owners.*
- ❖ **G.5** – *Adequate industrial land in areas that are close enough to goods and services to be efficient but far enough from other uses to offset objectionable impacts to the human and natural environment.*
 - **P.5.1** – *Match requirements of industrial land uses (such as human resources, adequate water supply, suitable road networks) and areas of Flathead County where those requirements can best be met.*
 - **P.5.2** – *Promote industrial parks and centers that take advantage of infrastructure and minimize impacts to the environment or adjacent land uses.*
 - The properties are located along Highway 93 approximately 5 miles from the City of Kalispell and approximately 5 miles south of the City of Whitefish. Because the properties are located along the highway the industrial use could have a negative impact on scenic views. However the I-1H zone requires greater setbacks for properties located along a highway, landscape buffering and other design criteria to minimize visual impacts.
 - **P.5.5** – *Restrict industrial uses that cannot be mitigated near incompatible uses such as residential, schools, environmentally sensitive areas such as wetlands, floodplains, riparian areas, areas of shallow groundwater, etc.*
 - The applicant is proposing an industrial zone adjacent to the Flathead County Landfill, business zoning and agricultural. The properties are not located within an environmentally sensitive area and not located next to a school.
- ❖ **G.6** – *Adequate commercial land that is safely accessible and efficiently serviceable.*
 - Comments from the City of Kalispell indicate, “MDT has already indicated in the last several Transportation Impact Studies for users along this stretch of Highway 93 that full access approaches for commercial users are not available. Anything less than a full access approach onto Highway 93 would hinder future business access and success (i.e. right-in right-out only access) and if approved will hinder the free flowing capacities of Highway 93, a 4 lane road that the greater Flathead has worked hard to develop, and must work harder to maintain in a free flowing configuration. There does not appear to be a coordinated effort to mitigate traffic impacts to the adjacent highway and there is no perceived community benefit.”
 - **P.6.5** – *Conserve resources and minimize transportation demand by encouraging redevelopment and infill of existing commercial areas in the county.*

- The proposed zone change would not encourage redevelopment and infill on existing commercial areas as it would continue to add to an industrial area created after the Growth Policy was adopted.
- **P.8.2 – Identify required criteria for various densities that support the seven elements of the public’s vision outlined in Chapter 1.**

The Seven Elements of the Public’s Vision include:

- ***Protect the Views***
The vision states, *‘One characteristic that residents of Flathead County cherish is the view. Views of mountains, lakes, forests, wildlife, and open spaces are cited as characteristics residents of Flathead County would not change. “Scenic resources” are valued throughout the county regardless of age, gender or location.’* As previously stated, because the properties are located along the highway the industrial use could have a negative impact on scenic views. However the I-1H zone requires greater setbacks for properties located along a highway, landscape buffering and other design criteria that could mitigate visual impacts.
- ***Promote a Diverse Economy***
The vision states, *‘Residents envision low unemployment and well-paying jobs.’* The proposed industrial zoning has the potential to allow for industrial use which has the potential to create living-wage jobs.
- ***Manage Transportation***
Vision 3 discusses managing traffic flow through land development patterns; this report contains discussion regarding the proposals impacts on traffic below.
- ***Maintain the Identity of Rural Communities***
The vision states, *‘Preventing communities from growing together and losing their unique identities was another concern of many scoping meeting participants. The concern of seeing Flathead County turn into one continuous sprawling development was expressed in a variety of ways. Many residents of Flathead County do not want to see strip malls, used car lots, mini storage, warehouse stores, lumber yards, and other visually dominating land uses disrupt the perception of driving between unique rural communities.’* The proposed I-1H zoning would allow for industrial uses between the cities of Whitefish and Kalispell and could disrupt the perception of driving between unique rural communities.
- ***Protect Access to and Interaction with Parks and Recreation***
This report contains a discussion on parks and recreation below.
- ***Properly Manage and Protect the Natural and Human Environment***
The vision states, *‘Air and water quality were mentioned frequently as well as co-habitation of people and wildlife being qualities that make Flathead County unique and desirable. Many residents expressed a desire to protect the lakes, rivers, ponds, groundwater and air for future generations.’* The properties do not contain any surface waters or groundwater which would be impacted by this proposal. The I-1H zone allows for industrial uses that

do not typically create objectionable by-products, such as dirt, noise, glare, heat, odors, smoke, etc, that extend beyond lot lines.

- *Preserve the Rights of Private Property Owners.*

As previously stated, the amendment would allow the owner to subdivide the property and allow the owner to sell the land for light industrial uses.

- ❖ *G.14 – Solid waste collection facility operation and landfill expansion free from land use conflicts with adjacent property owners.*

- *P.14.1 – Identify a 1,320 foot buffer surrounding the landfill and designate this area only for those land uses compatible with current and future landfill activities. Compatible use types such as industrial should be encouraged in this buffer.*

- The subject properties are located within the 1,320 foot buffer surrounding the landfill.

- ❖ *G.21 – A healthy and vibrant Flathead County economy that provides diversity and living-wage job opportunities and is comprised of sustainable economic activities and private sector investment.*

- *P.21.1 – Provide adequate land area designated for commercial and industrial use to promote affordability, creating entrepreneurialism and/or businesses relocation to Flathead County.*

- The proposed industrial zoning has the potential to allow for industrial use which has the potential to create living-wage jobs.

- *P.22.2 – Promote business centers and industrial parks in areas served by sufficient infrastructure with consideration to proximity to population densities.*

- The proposed industrial zoning is located between the cities of Whitefish and Kalispell along Highway 93.

- ❖ *G.32 – Maintain consistently high level of fire, ambulance and emergency 911 response services in Flathead County as growth occurs.*

- ❖ *G.33 – Maintain a consistently high level of law enforcement services in Flathead County as growth occurs.*

- This report contains discussion on the adequacy of emergency service below.

Finding #1: The proposed zoning map amendment generally complies with the Flathead County Growth Policy because while it does not meet all the seven elements of the public vision it is located across the highway from the County Landfill and within the 1,320 foot buffer, is located between the cities of Whitefish and Kalispell along Highway 93, the I-1H zone requires greater setbacks for properties located along a highway, landscape buffering and other design criteria to minimize visual impacts and is not located within in an environmentally sensitive area and not located next to a school.

2. Whether the proposed map amendment is designed to:

a. Secure safety from fire and other dangers;

The subject properties are located within the West Valley Fire District. The nearest fire and emergency response center is located approximately 4.75 road miles

northwest of the properties, on Whitefish Stage. The West Valley Fire Department, who did not provide comments on this proposal, would respond in the event of a fire or medical emergency. Access to the subject properties would be directly from Highway 93, a paved four lane state highway, as well as Scenic Ridge Road.

The subject properties are located within the Wildland Urban Interface (WUI) and a county wide priority area. The subject properties are not heavily forested and is not located adjacent to heavily forested areas of the county.

According to FEMA FIRM Panels 30029C1415J and 30029C1415J, the properties are located within an unshaded Zone X an area determined to be outside the 0.2% annual chance flood hazard.

Finding #2: The proposed map amendment will not impact safety from fire and other danger because even though the properties are located in the WUI it is not heavily forested and is located approximately 4.75 road miles from the nearest fire station within the West Valley Fire District, is located on a U.S. Highway and not located within the 100 year floodplain.

b. Promote public health, public safety, and general welfare;

As previously stated, the subject properties are located within the West Valley Fire District. The West Valley Fire Department would respond in the event of a fire or medical emergency and the Flathead County Sheriff's Department provides police services to the subject properties. Highway 93 appears adequate to provide ingress and egress for emergency vehicles which would help to ensure adequate public health and safety.

I-1H is defined as a district to provide areas for light industrial uses and service uses that typically do not create objectionable by-products (such as dirt, noise, glare, heat, odors some etc.), as such the proposal is not anticipated to adversely impact public health, safety or general welfare.

Finding #3: The proposed zoning map amendment would likely have minimal impact on public health, public safety and general welfare because the properties are served by the West Valley Fire Department, Flathead County Sheriff, future development would comply with the allowed uses in an I-1H zone which do not produce objectionable by-products per the definition.

c. Facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements.

Primary access to the properties are off Highway 93. Highway 93 is a 4-lane paved highway with a 200 plus foot easement. The average daily traffic along Highway 93 near the subject property in 2019 was 17,708 vehicle trips.

Using standard trip generation, residential uses typically generate 10 vehicle trips per dwelling for single family residential. The properties are approximately 14.074 acres in size and the minimum lot size for the current SAG-10 zone is 10 acres. Therefore, approximately 1 single family home could be constructed on the property, which would generate 10 average daily trips.

According to the ITE Trip Generation Manual 9th Edition "General Light Industrial" generates approximately 51.63 average daily trips per acre for a

weekday. The proposed I-1H zoning has the potential to generate 728 average daily trips.

Traffic for the industrial use will be via Highway 93 through an existing approach permit, which would require an updated approach permit if the use changes in the future. There would also be adequate access to the properties from Scenic Ridge Road but would require an approved approach permit from the County Road Department. This has the potential to impact traffic flow at the approach for the properties along the highway. However comments from MDT state, “As stated in the submittal if in the future there is a change to the use of the existing approach to Hwy 93 than the owner should contact MDT for a new approach permit.”

Finding #4: The proposed amendment would appear to facilitate the adequate provision of transportation because the traffic would likely utilize an existing approach onto Highway 93, there would be alternate access from Scenic Ridge Road with an approved permit from the County Road Department and the owner will need to obtain a revised approach permit from MDT should the use change.

While the subject property is located within the Whitefish High and Whitefish Elementary School Districts, the proposed industrial use would likely not generate any school children. The zoning map amendment would not impact the existing park system because minimal demand on existing parks would be created and the industrial use would not require parkland dedication during subdivision review.

Water and sewer would likely be developed with onsite systems and if the property were subdivided would require review from the Flathead City-County Environmental Health and Montana Department of Environmental Quality.

Finding #5: The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because the further division of land or a change of use would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality and there would be minimal impact on schools and parks as a result of this proposal since the request is for an industrial zone.

3. In evaluating the proposed map amendment, consideration shall be given to:

a. The reasonable provision of adequate light and air;

The bulk and dimensional requirements, which includes setbacks, have been established to provide for a reasonable provision of light and air. The density allowed within the proposed zoning would be greater than the density allowed within the current SAG-10 zoning designation.

The minimum lot area for the proposed I-1H zone is one acre and the minimum lot area for the existing SAG-10 zone is 10 acres. The density allowed within the I-1H zone is greater than the density allowed within the current SAG-10 zone. The maximum building height within the proposed I-1H zone is 40 feet and the maximum height for the existing SAG-10 zone is 35 feet. The permitted lot coverage is 20% for the SAG-10 zone and permitted lot coverage is not applicable in the I-1H zone. More of the acreage could be covered by structure under the proposed I-1H zone because there is no applicable lot coverage in the I-1H zone.

The bulk and dimensional requirements in the I-1H zone require a setback from the boundary line of 20 feet for the front, rear and side-corner and 10 feet from the side for the structure. There is not a separate setback requirement for accessory structures as is the case in the existing zone. A 20 foot setback is required from streams, rivers and unprotected lakes which do not serve as property boundaries and an additional 20 foot setback is required from county roads classified as collector or major/minor arterials. The bulk and dimensional requirements for the I-1H designation have been established to provide for a reasonable provision of light and air.

The I-1H district requires additional design standards including a 100 foot setback from the highway for a lot with direct access from the highway as this property has. The I-1H also requires a 25 foot landscape buffer along the highway and 15 feet from county roads. These design standards serve to provide adequate light and air.

Finding #6: The proposed zoning map amendment will provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements within the proposed I-1H designation, including greater setback requirements for lots with direct access to a highway and landscape buffers.

b. The effect on motorized and non-motorized transportation systems;

Primary access to the properties are currently off Highway 93. Highway 93 is a 4-lane paved highway with a 200 plus foot easement. The average daily traffic along Highway 93 near the subject properties in 2019 was 17,708 vehicle trips.

Using standard trip generation, residential uses typically generate 10 vehicle trips per dwelling for single family residential. The property is approximately 14.074 acres in size and the minimum lot size for the current SAG-10 zone is 10 acres. Therefore, approximately 1 single family home could be constructed on the subject, which would generate 10 average daily trips.

According to the ITE Trip Generation Manual 9th Edition “General Light Industrial” generates approximately 51.63 average daily trips per acre for a weekday. The proposed I-1H has the potential to generate 728 average daily trips.

Traffic for the industrial use will be via Highway 93 through an existing approach permit, which would require an updated approach permit if the use changes. There would also be adequate access to the properties from Scenic Ridge Road but would require an approved approach permit from the County Road Department. This has the potential to impact traffic flow at the approach for the property along the highway. However comments from MDT state, “As stated in the submittal if in the future there is a change to the use of the existing approach to Hwy 93 than the owner should contact MDT for a new approach permit.”

The Flathead County Trails Plan identifies Highway 93 as an arterial bike/pedestrian trail. It is anticipated that there will be minimal impact on non-motorized traffic because future subdivision development on the property would require an easement for a bicycle trail along Highway 93.

Finding #7: Effects on motorized and non-motorized transportation systems will be minimal because the traffic would utilize an existing approach onto Highway 93, there would be an option to utilize Scenic Ridge Road as a second access point and a revised approach permit from MDT would be required for a change in use, and there appears to be adequate space for a future bike/pedestrian easement along Highway 93.

c. Compatible urban growth in the vicinity of cities and towns (that at a minimum must include the areas around municipalities);

The subject properties are located between the cities of Kalispell and Whitefish. The subject properties are located approximately a half mile north of the northernmost extent of the Kalispell Growth Policy Map, annexation policy boundary and the Kalispell City limits. The property is approximately 3.75 miles south of the southernmost extent of the Whitefish Growth Policy Map.

The City of Kalispell comments do not specifically address the compatibility with the urban growth of Kalispell instead the comments discuss the creation of the Highway 93 North Zoning District, access on to the highway and the existing commercial and industrial inventory. The City of Whitefish did not provide comment.

Finding #8: Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Kalispell's urban growth and it has been determined that the map amendment is located beyond the northern extent of Kalispell's urban growth, as shown on the Kalispell Growth Policy Future Land Use Map, and therefore there is no plan with which to be compatible and comments from Kalispell do not specifically address compatibility with the urban growth of Kalispell.

Finding #9: Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Whitefish's urban growth and it has been determined the map amendment is located beyond the southern extent of Whitefish's urban growth, as shown on the Whitefish Growth Policy Future Land Use Map, and therefore there is no plan with which to be compatible and the City of Whitefish did not provide comment.

d. The character of the district(s) and its peculiar suitability for particular uses;

The character of the district and its peculiar suitability for particular uses can best be addressed using the "three part test" established for spot zoning by legal precedent in the case of *Little v. Board of County Commissioners*. Spot zoning is described as a provision of a general plan (i.e. Growth Policy, Neighborhood Plan or Zoning District) creating a zone which benefits one or more parcels that is different from the uses allowed on surrounding properties in the area. Below is a review of the three-part test in relation to this application and the character of the district and its peculiar suitability for particular uses.

i. *The zoning allows a use that differs significantly from the prevailing use in the area.*

The character of the overall zoning district is agricultural with the majority of the property in the area zoned SAG-10 and AG-40. Within the immediate

vicinity is business uses, such as an RV dealer, restaurant and boat and RV storage. The property is also located within close proximity to the Flathead County Sanitary Land Fill and agriculture. The application states, “Lastly, although not zoned industrial, the Flathead County Landfill is one of the largest industrial uses in the County when considering the acreage devoted to the use.”

The properties are located to the north of multiple, previously approved I-1H zones.

The proposed zoning map amendment, if approved, would allow for uses that are typical of light industrial zoning districts and similar to uses that are allowed under the existing industrial and commercial zoning and on surrounding properties.

ii. ***The zoning applies to a small area or benefits a small number of separate landowners.***

The zoning map amendment would apply to two tracts of land which is owned by one landowner. Using standard ArcGIS software staff was able to determine the subject properties are located within SAG-10 zoned area approximately 14.074 acres in size and there is I-1H zoning located to the south of the subject property. Immediately adjacent land and one additional parcel directly to the south are approximately 44 acres and zoned I-1H. The I-1H zoning to the southwest of the property approximately 11.0 acres in size.

Although the subject properties total 14.074 acres in size, the new I-1H zoning designation would add to the existing adjacent I-1H zoning to the north and would therefore not be applied to small area relative to other zoning in the vicinity.

iii. ***The zoning is designed to benefit only one or a few landowners at the expense of the surrounding landowners or the general public and, thus, is in the nature of special legislation.***

According to comments from the City of Kalispell state, “The Highway 93 North Zoning District, was specifically enacted by the property owners in the middle 1990’s to avoid the spread of commercial and industrial development along US 93. This effort is at the heart of protecting our scenic corridors along highways, a view championed by the greater community. Rezoning the subject property I-1H would take all future development control away from the county, which could lead to more strip commercial and industrial development. This can be evidences by the approval of the previous industrial zone change requests in the area, which we had also recommended denial.”

I-1H zoning requires additional design standards including a 100 foot setback from the highway for a lot with direct access from the highway. I-1H zoning also requires a 25-foot landscape buffer along the highway and 15-feet from county roads and signage is required to be no closer than 50-feet from public right-of-way. Additionally overhead doors and loading bays shall not be placed facing the highway. These design standards serve to limit the impact of the I-1H zoning on the surrounding landowners and the general public. The I-1H also requires a site plan review prior to the development of a property.

As previously stated property, the properties to the north and southwest are zoned I-1H and allow for similar uses to what is allowed within the proposed zoning.

In summary, all three criteria must be met for the application to potentially be considered spot zoning. The proposed zoning map amendment does not appear to be at risk of spot zoning, as it does not appear to meet all three of the criteria.

Finding #10: The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because design standards and site plan review serve to limit the impact of the I-1H zoning on the surrounding landowners and the general public, and there are similarly zoned properties and associated uses in the vicinity.

e. Conserving the value of buildings and encouraging the most appropriate use of land throughout the jurisdictional area.

Staff looked at the zoning within a half mile of the subject property and along the Highway 93 corridor when reviewing the existing buildings and the appropriate use of land. The character of the Highway 93 corridor is a mixture of suburban agricultural, agricultural, highway industrial, commercial and residential. The property is located along U.S. Highway 93 to the east of the Flathead County Landfill and several commercial businesses which are zoned B-2 and SAG-10.

To the north, south and east the zoning is also SAG-10. To the west along the highway is AG-40 and I-1H zoning. Further to the north along the highway is I-1H. The B-2 is located on both sides of the highway approximately 2.5 miles to the north. The proposed zone change would likely conserve the value of buildings and encourage the most appropriate use of land throughout the jurisdictional area.

Finding #11: This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this location because the I-1H designation allows for similar uses to the existing uses on the nearby I-1H, the property is located across the highway from the Flathead County Landfill and the area already contains a variety of uses.

4. Whether the proposed map amendment will make the zoning regulations, as nearly as possible, compatible with the zoning ordinances of nearby municipalities.

The subject properties are located between the cities of Kalispell and Whitefish. The subject properties are located approximately a half mile north of the northernmost extent of the Kalispell Growth Policy Map, annexation policy boundary and the Kalispell City limits. The property is approximately 3.75 south of the southernmost extent of the Whitefish Growth Policy Map. The City of Kalispell comments do not address compatibility with the zoning ordinance of their respective cities.

The application states, “Kalispell has approved a commercial node at the intersection of Church and Highway 93. The City recently approved commercial growth around the intersection of Highway 93 and Rose Crossing. It would appear the City of Kalispell discourages commercial growth except when they provide the design guidance through

the PUD process. The I-1H zoning was selected in part because it has design guidance for setbacks and landscaping buffering.”

Finding #12: Consideration has been given to the City of Kalispell’s growth plan and zoning ordinance, however it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Kalispell because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance on compatibility.

Finding #13: Consideration has been given to the City of Whitefish’s growth plan and zoning ordinance, however it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Whitefish because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance.

STAFF ANALYSIS

The subject property is located adjacent to Highway 93. Properties adjacent to Highway 93 both north and south of the subject property have been rezoned in the recent past with the Highway Overlay (HO). The HO requires additional design standards such as landscape buffering, architectural standards, parking in the side or rear of the building, and the dedication of a bicycle/pedestrian easement adjacent to the highway. The intent of HO is to mitigate impacts of non-residential development along major transportation corridors. The additional design standards are designed to do just that. While properties adjacent to Highway 93 continue to be rezoned to allow non-residential uses, staff recommends the Planning Board consider the intent of the HO and recommend to the County Commissioner that this request be approved with the addition of the Highway Overlay.

V. SUMMARY OF FINDINGS

1. The proposed zoning map amendment generally complies with the Flathead County Growth Policy because while it does not meet all the seven elements of the public vision it is located across the highway from the County Landfill and within the 1,320 foot buffer, is located between the cities of Whitefish and Kalispell along Highway 93, the I-1H zone requires greater setbacks for properties located along a highway, landscape buffering and other design criteria to minimize visual impacts and is not located within in an environmentally sensitive area and not located next to a school.
2. The proposed map amendment will not impact safety from fire and other danger because even though the properties are located in the WUI it is not forested and is located approximately 4.75 road miles from the nearest fire station within the West Valley Fire District, is located on a U.S. Highway and not located within the 100 year floodplain.
3. The proposed zoning map amendment would likely have minimal impact on public health, public safety and general welfare because the property is served by the West Valley Fire Department, Flathead County Sheriff, future development would comply with the allowed uses in an I-1H zone which do not produce objectionable by-products per the definition.
4. The proposed amendment would appear to facilitate the adequate provision of transportation because the traffic would likely utilize an existing approach onto Highway

93, there would be alternate access from Scenic Ridge Road with an approved permit from the County Road Department and the owner will need to obtain a revised approach permit from MDT if in the future the use changes.

5. The proposed amendment would facilitate the adequate provision of water, sewerage, schools, parks, and other public requirements because the further division of land or a change of use would require review through the Flathead City-County Health Department and the Montana Department of Environmental Quality and there would be minimal impact on schools and parks as a result of this proposal since the request is for an industrial zone.
6. The proposed zoning map amendment will provide adequate light and air to the subject property because future development would be required to meet the bulk and dimensional requirements within the proposed I-1H designation, including greater setback requirements for lots with direct access to a highway and landscape buffers.
7. Effects on motorized and non-motorized transportation systems will be minimal because the traffic would utilize an existing approach onto Highway 93, there would be an option to utilize Scenic Ridge Road as a second access point, and a revised approach permit from MDT would be required for a change in use, and there appears to be adequate space for a future bike/pedestrian easement along Highway 93.
8. Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Kalispell's urban growth and it has been determined that the map amendment is located beyond the northern extent of Kalispell's urban growth, as shown on the Kalispell Growth Policy Future Land Use Map, and therefore there is no plan with which to be compatible and comments from Kalispell do not specifically address compatibility with the urban growth of Kalispell.
9. Consideration has been given to the compatibility of the proposed zoning map amendment to the City of Whitefish's urban growth and it has been determined the map amendment is located beyond the southern extent of Whitefish's urban growth, as shown on the Whitefish Growth Policy Future Land Use Map, and therefore there is no plan with which to be compatible and the City of Whitefish did not provide comment.
10. The proposed zoning map amendment appears suitable for the character of the district and does not appear to constitute spot zoning because design standards and site plan review serve to limit the impact of the I-1H zoning on the surrounding landowners and the general public, and there are similarly zoned properties and associated uses in the vicinity.
11. This proposed zoning map amendment appears to conserve the value of buildings and encourage the most appropriate use of land in this location because the I-1H designation allows for similar uses to the existing uses on the nearby I-1H, the properties are located across the highway from the Flathead County Landfill and the area already contains a variety of uses.
12. Consideration has been given to the City of Kalispell's growth plan and zoning ordinance, however it is not possible for the proposed zoning map amendment to be compatible with zoning ordinance of Kalispell because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance on compatibility.
13. Consideration has been given to the City of Whitefish's growth plan and zoning ordinance, however it is not possible for the proposed zoning map amendment to be compatible with

zoning ordinance of Whitefish because it is outside the city limits and outside the plan area, therefore no documents exist that would provide guidance.

VI. CONCLUSION

Per Section 2.08.020(4) of the Flathead County Zoning Regulations (FCZR), a review and evaluation by the staff of the Planning Board comparing the proposed zoning map amendment to the criteria for evaluation of amendment requests found in Section 2.08.040 FCZR has found the proposal does not generally comply with all the review criteria, based upon the draft Findings of Fact presented above. Section 2.08.040 does not require compliance with all criteria for evaluation, only that the Planning Board and County Commissioners should be guided by the criteria.

Planner: LM